

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 13-O-10153-PEM
)	
JACQUES STIRLING WHITFIELD,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 147362,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Jacques Stirling Whitfield (respondent) was charged with (1) failing to perform legal services with competence; (2) committing an act involving moral turpitude, dishonesty or corruption; (3) failing to promptly return unearned fees; (4) failing to release a client's papers and property; (5) failing to render an appropriate accounting of funds; and (6) failing to cooperate in a State Bar investigation. He failed to appear at the trial of this case, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated

¹ Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as respondent's default was entered prior to July 1, 2014, the rules which were in effect at the time respondent's default was entered are the operative rules in this matter.

within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that all of the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on June 11, 1990, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On September 17, 2013, the State Bar filed and properly served the notice of disciplinary charges (NDC) in this matter on respondent by certified mail, return receipt requested, and by first-class mail, to his membership records address. On November 1, 2013, respondent filed his answer to the NDC.³

On October 29, 2013, the court filed and served on respondent at his membership records address by first-class mail, postage paid, an order setting forth that trial was set at 10:00 a.m. on January 21-23, 2104.⁴ The State Bar appeared for trial on January 21, 2014, but respondent did not.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

³ The State Bar's motion for the entry of respondent's default filed on November 12, 2013, was moot, as respondent filed his answer to the NDC on November 1, 2013.

⁴ Respondent had participated in-person in a status conference on October 28, 2013, at which time trial dates were set. In addition, the court also filed a minute order on January 16, 2014, setting forth that the case was continued to January 21, 2014, at 10:00 a.m. on culpability and discipline. This order was properly served on respondent by first-class mail, postage prepaid, to his membership records address which was also the address for respondent in his answer to the NDC.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed January 21, 2014. The order notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time.⁵

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On May 1, 2014, the State Bar filed the petition for disbarment.⁶ As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since January 21, 2014, the date the order entering his default was served on respondent;⁷ (2) there are no other disciplinary matters pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund (CSF) has made payments resulting from misconduct by respondent. Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on May 27, 2014.

Respondent has a prior record of discipline. Pursuant to a Supreme Court order filed on July 2, 2002, respondent was suspended for three years and until he has shown to the court proof of his rehabilitation, fitness to practice and learning and ability in the general law and makes and provides proof of specified restitution, the execution of such suspension was stayed, and he was placed on probation for five years, on conditions including restitution. Respondent stipulated

⁵ The order was properly served on respondent by certified mail, return receipt requested, to his membership records address. The return receipt was returned to the court indicating a delivery date of January 23, 2014, and was signed by someone whose first name began with the letter "J" and whose last name began with the letter "W."

⁶ The disbarment petition was properly served on respondent by certified mail, return receipt requested, to his membership records address.

⁷ This is the same date that the default was entered.

that he willfully (1) failed to perform legal services (four matters);⁸ (2) failed to refund unearned attorney's fees (four matters); (3) failed to deliver client funds to his client; and (4) failed to respond to his client's reasonable requests for status reports.

Pursuant to a Supreme Court order filed on May 30, 2007, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years, subject to certain conditions, including that he be suspended for 60 days. Respondent stipulated that he failed to comply with conditions attached to his disciplinary probation by failing to timely file quarterly reports and pay restitution and provide satisfactory evidence of payment as required.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable of the rule and statutory violations as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 13-O-10153 (Crabtree Matter)

Count One – respondent willfully violated rule 3-110(A) of the State Bar Rules of Professional Conduct (failing to perform legal services with competence) by intentionally, recklessly or repeatedly failing to perform legal services with competence by performing no legal services of value on behalf of his clients.

Count Two – respondent willfully violated Business and Professions Code section⁹ 6106 (moral turpitude) by signing or causing to be signed his client's name to a promissory note to

⁸ In one of these matters, rather than specifically stipulating that the failed to perform legal services, he stipulated that he failed to respond to a motion for summary judgment against his client.

settle her legal matter when he knew or was grossly negligent in not knowing that his client did not have knowledge of or give her consent or authorization for her name to be signed to the promissory note.

Count Three - respondent willfully violated rule 3-700(D)(2) of the State Bar Rules of Professional Conduct (failure to return unearned fees) by failing to promptly refund any portion of the \$11,900 in unearned advanced fees to his client upon termination of respondent's employment.

Count Four - respondent willfully violated rule 3-700(D)(1) of the State Bar Rules of Professional Conduct (failure to return client papers/property) by failing to promptly release to his client, upon the client's request, the client's property and papers.

Count Five – respondent willfully violated rule 4-100(B)(3) of the State Bar Rules of Professional Conduct (maintain records of client property/render appropriate accounts) by failing to render an appropriate accounting to his client of advanced fees following his client's request for an accounting.

Count Six – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation) by failing to provide a written response to the State Bar's letters requesting a response to allegations of misconduct being investigated.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and respondent's disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

⁹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

(2) respondent had actual notice of this proceeding, as he filed an answer to the NDC, and he had notice of the trial dates, as he participated in a status conference at which time trial dates were set;

(3) the default was properly entered under rule 5.81; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to appear for the trial of this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Jacques Stirling Whitfield be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to Jacqueline Crabtree in the amount of \$11,900 plus 10 percent interest per year from April 1, 2012. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Jacques Stirling Whitfield, State Bar number 147362, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: August _____, 2014

PAT McELROY
Judge of the State Bar Court